

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-6357**

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KERRY GARNER,

Petitioner - Appellant,

versus

CALVIN ANTHONY, Warden of Lee Correctional  
Institution; CHARLES CONDON, Attorney General  
of the State of South Carolina,

Respondents - Appellees.

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Appeal from the United States District Court for the District of  
South Carolina, at Columbia. Terry L. Wooten, District Judge. (CA-  
02-1330-25-BC-3)

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Submitted: July 7, 2003

Decided: July 24, 2003

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Before MOTZ and GREGORY, Circuit Judges, and HAMILTON, Senior  
Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Kerry Garner, Appellant Pro Se. William Edgar Salter, III, OFFICE  
OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South  
Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Kerry Garner seeks to appeal the district court's order adopting the report and recommendation of a magistrate judge and dismissing as untimely his 28 U.S.C. § 2254 (2000) petition. An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2254 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and conclude that Garner has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322 (2003). Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED